

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 DAVID A. DELGADO,

8 Plaintiff,

9 v.

10 STATE OF WASHINGTON,  
11 DIVISION OF CHILD SUPPORT;  
12 STATE OF WASHINGTON,  
13 ATTORNEY GENERAL; and  
14 SPOKANE COUNTY SUPERIOR  
COURT,

Defendants.

NO. 2:18-CV-0328-TOR

ORDER DISMISSING AMENDED  
COMPLAINT

15 BEFORE THE COURT is Plaintiff's amended Complaint (ECF No. 12).

16 The Court has reviewed the record and files herein, and is fully informed. For the  
17 reasons discussed below, all claims asserted in Plaintiff's amended Complaint  
18 (ECF No. 12) are **DISMISSED without leave to amend.**

19 //

20 //

1 **BACKGROUND**

2 Plaintiff David A. Delgado, proceeding *pro se* and *in forma pauperis*, brings  
3 suit against Washington State Division of Child Support (DCS), Washington State  
4 Attorney General (AG), and Spokane County Superior Court. ECF No. 12 at 2-3.  
5 This is Plaintiff's second Complaint. The Court previously dismissed Plaintiff's  
6 first Complaint with leave to amend on December 12, 2018.<sup>1</sup> ECF No. 11.  
7 Plaintiff subsequently filed this amended Complaint on February 22, 2019. ECF  
8 No. 12. Plaintiff also submitted a separate document challenging the  
9 constitutionality of several Washington statutes. ECF No. 14. After reviewing the  
10 amended Complaint in the light most favorable to Plaintiff, the Court finds that  
11 Plaintiff has failed to state facts which "plausibly give rise to an entitlement to  
12 relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

13 **PLAINTIFF'S ALLEGATIONS**

14 The facts according to Plaintiff's Complaint are as follows. Plaintiff alleges  
15 that domestic violence was perpetrated on himself and minors in April 2016. ECF

---

16  
17 <sup>1</sup> Though the Court dismissed Plaintiff's prior Complaint, the Court did not  
18 revoke Plaintiff's *in forma pauperis* status at that time. See ECF Nos. 5, 6.  
19 Accordingly, Plaintiff's second application to proceed *in forma pauperis* (ECF No.  
20 13) is unnecessary and, therefore, denied as moot.

1 No. 12 at 4. Thereafter, case # 16-3-00800-1 was initiated by Maritza A. Flores in  
2 Spokane County Superior Court to elude prosecution for domestic violence,  
3 deprive Plaintiff of parental rights, defraud the courts, and hide evidence.<sup>2</sup> *Id.*  
4 Plaintiff states that this constitutes “constructive eviction by fraud of courts” and  
5 avoiding due process. *Id.*

6 According to Plaintiff, “[b]y Ex Post Facto and Effective Bill of Attainder,”  
7 Washington State then reversed primary custodianship pursuant to RCW 26.09.002  
8 and 26.09.191, wrongly calculated Plaintiff’s Title 38 benefits, barred Plaintiff’s  
9 testimony, and denied victim rights. *Id.* at 4-6. Additionally, Plaintiff claims that  
10 Washington State allowed a perpetrator of domestic violence to alter truth and  
11 obtain primary custody of Plaintiff’s children, suppressed evidence, and effected a  
12 Bill of Attainder upon Plaintiff. *Id.* at 6.

13 Next, Plaintiff asserts that DCS improperly initiated case #2661739,  
14 wrongfully garnished Plaintiff’s disability benefits “via Ex Post Facto method,”  
15 averted due process, retaliated against a witness, and instigated “Peonage,  
16 Extortion, Racketeering,” and threats of arrest, among other things. *Id.* at 5-6.  
17 Plaintiff alleges that the illegal deprivation of access to and seizure of immune  
18

---

19 <sup>2</sup> The Court observes that Ms. Flores is no longer a named defendant in this  
20 case.

1 funds has resulted in endangerment of health and risking homeless to Plaintiff, as  
2 well as depriving Plaintiff's children of time and resources, thereby rendering  
3 Plaintiff unable to provide for the children. *Id.* Plaintiff claims these actions "have  
4 empowered an abuser to continue Harassments, child abuses[,] stalking." *Id.*  
5 Finally, Plaintiff contends that the "City/State" failed to investigate his claims. *Id.*  
6 at 6.

## 7 DISCUSSION

8 Under the Prison Litigation Reform Act of 1995, the Court is required to  
9 screen a complaint filed by a party seeking to proceed *in forma pauperis*. 28  
10 U.S.C. § 1915(e); *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001)  
11 (noting that "the provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to  
12 prisoners"). Section 1915(e)(2) provides:

13 Notwithstanding any filing fee, or any portion thereof, that may have  
14 been paid, the court shall dismiss the case at any time if the court  
15 determines that (A) the allegation of poverty is untrue; or (B) the  
16 action or appeal (i) is frivolous or malicious; (ii) fails to state a claim  
17 on which relief may be granted; or (iii) seeks monetary relief against a  
18 defendant who is immune from such relief.

17 28 U.S.C. § 1915(e)(2).

18 A claim is legally frivolous under § 1915(e)(2)(B)(i) when it lacks an  
19 arguable basis either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325  
20 (1989), *superseded by statute*, 28 U.S.C. § 1915(d), *as recognized in Lopez v.*

1 *Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000); *Franklin v. Murphy*, 745 F.2d 1221,  
2 1227–28 (9th Cir. 1984). The Court may, therefore, dismiss a claim as frivolous  
3 where it is based on an indisputably meritless legal theory or where the factual  
4 contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. The critical inquiry is  
5 whether a constitutional claim has an arguable legal and factual basis. *See Jackson*  
6 *v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989), *superseded by statute*, 28 U.S.C. §  
7 1915(d), *as recognized in Lopez*, 203 F.3d at 1130–31; *Franklin*, 745 F.2d at 1227.

8 “The standard for determining whether a plaintiff has failed to state a claim  
9 upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the  
10 Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.”  
11 *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Accordingly, “[d]ismissal  
12 is proper only if it is clear that the plaintiff cannot prove any set of facts in support  
13 of the claim that would entitle him to relief.” *Id.* “In making this determination,  
14 the Court takes as true all allegations of material fact stated in the complaint and  
15 construes them in the light most favorable to the plaintiff.” *Id.* Mere legal  
16 conclusions, however, “are not entitled to the assumption of truth.” *Iqbal*, 556  
17 U.S. at 679. The complaint must contain more than “a formulaic recitation of the  
18 elements of a cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555  
19 (2007). It must plead “enough facts to state a claim to relief that is plausible on its  
20 face.” *Id.* at 570. The Court construes a *pro se* plaintiff’s pleadings liberally,

1 affording the plaintiff the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342  
2 (9th Cir. 2010) (quotations and citation omitted).

3 **A. Failure to State a Claim**

4 Here, the Court finds that Plaintiff's amended Complaint does not contain  
5 anything more than "a formulaic recitation of the elements of a cause of action."  
6 *Twombly*, 550 U.S. at 555. Liberally construing Plaintiff's amended Complaint,  
7 the Court is simply unable to identify any material facts to support Plaintiff's claim  
8 to relief. In describing what happened to him and the specific conduct of each  
9 Defendant, Plaintiff exclusively relies on legal conclusions rather than material  
10 facts to support his allegations. For example, while Plaintiff broadly alleges that  
11 the "WA State" barred his testimony and DCS wrongfully garnished his disability  
12 benefits, Plaintiff fails to provide specific facts describing the precise conduct of  
13 either actor. *See* ECF No. 12 at 6. The Court notes that Plaintiff has not named the  
14 State of Washington as a Defendant in this case.

15 In short, Plaintiff fails to meet his burden to plead "enough facts to state a  
16 claim to relief that is plausible on its face." *Id.* at 570. Accordingly, the Court  
17 dismisses Plaintiff's amended Complaint for failure to state a claim upon which  
18 relief can be granted.

19 //

20 //

## OPPORTUNITY TO AMEND

Unless it is absolutely clear that amendment would be futile, a *pro se* litigant must be given the opportunity to amend his complaint to correct any deficiencies. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987), *superseded by statute*, 28 U.S.C. § 1915(e)(2), *as recognized in Aktar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir. 2012). This is Plaintiff's second complaint. In dismissing his prior complaint, the Court identified the complaint's deficiencies and granted Plaintiff leave to amend the complaint accordingly. At this time, the Court finds that it is absolutely clear that no amendment will cure the deficiencies in Plaintiff's claims. Therefore, the Court dismisses Plaintiff's amended Complaint without leave to amend.

## REVOCATION OF IN FORMA PAUPERIS STATUS

Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith." The good faith standard is an objective one, and good faith is demonstrated when an individual "seeks appellate review of any issue not frivolous." *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). For purposes of 28 U.S.C. § 1915, an appeal is frivolous if it lacks any arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

1 The Court finds that any appeal of this Order would not be taken in good  
2 faith and would lack any arguable basis in law or fact. Accordingly, the Court  
3 hereby revokes Plaintiff's *in forma pauperis* status.

4 If Plaintiff seeks to pursue this matter again in the district court or on appeal,  
5 he must pay the requisite filing fee.

6 **ACCORDINGLY, IT IS HEREBY ORDERED:**

7 1. The claims asserted in Plaintiff's amended Complaint (ECF No. 12) are

8 **DISMISSED** without right to amend herein.

9 2. Plaintiff's *in forma pauperis* status is hereby **REVOKED**.


10 3. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of  
11 this Order would not be taken in good faith and would lack any arguable  
12 basis in law or fact.

13 4. Plaintiff's second Application to Proceed In Forma Pauperis (ECF No.  
14 13) is **DENIED as moot**.

15 The District Court Executive is directed to enter this Order and Judgment,  
16 forward copies to Plaintiff, and **CLOSE** the file.

17 **DATED** March 8, 2019.



  
THOMAS O. RICE  
Chief United States District Judge